

Introduced by Senator Figueroa

December 4, 2000

An act to amend Sections 805, 805.1, ~~and 805.5~~ 805.5, 806, *and 2313* of, and to add Sections 805.6 and 805.7 to, the Business and Professions Code, relating to peer review.

LEGISLATIVE COUNSEL'S DIGEST

SB 16, as amended, Figueroa. Peer review.

Existing law provides a procedure for the professional review of specified healing arts licentiates by a peer review body, defined as including, among other entities, a nonprofit hospital service plan. Under existing law, a peer review body is required to file with the agency having regulatory jurisdiction over the licentiate a report, designated as an "805" report, if the peer review body takes one of several specified actions against the licentiate. Existing law makes the failure to file this report punishable by a fine of not more than \$5,000, or if the failure is intentional, by a fine of not more than \$10,000.

This bill would delete a nonprofit hospital service plan from those entities included within the definition of a peer review body and would specify that ~~an osteopathic physician and surgeon licentiate is~~ *disability insurers that contract with licentiates to provide services at alternative rates of payment are* subject to the professional peer review process.

This bill would add to the specified actions that a peer review body is required to report, *within a specified timeframe*, in an 805 report to the relevant licensing agency the licentiate's withdrawal or abandonment of an initial or renewal application for staff privileges or membership after notice of an impending investigation or denial of the

application for a medical disciplinary cause or reason. This bill would also increase the amount of the fine for the failure to file an 805 report to not more than \$50,000, and to not more than \$100,000 if the failure is intentional. The bill would specify that the intentional failure to file an 805 report by a licensed healing arts practitioner constitutes unprofessional conduct. This bill would authorize the Medical Board of California, the Osteopathic Medical Board of California, and *the* Dental Board of California to audit, as specified, any peer review body to determine its compliance with its responsibilities to file 805 reports and to establish an electronic notification system, as specified, of the filing of 805 reports.

This bill would additionally ~~require~~ *encourage* the Medical Board of California to establish a pilot program to provide specified health care professionals remedial training and education.

This bill would also require the Division of Medical Quality of the Medical Board of California to report annually to the Legislature the total number of reports received pursuant to Section 805.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) Peer review is an essential component of the regulation by
4 certain licensing agencies of the quality of health care practice in
5 this state and of the health care community's responsibility to
6 engage in active self-regulation of the quality of health care
7 services provided to Californians. Because licensed health care
8 practitioners and the administrators of the facilities within which
9 these licentiates practice are in the best position to observe the
10 quality of health care services being provided to the public, it is
11 appropriate for licentiates to participate in early intervention and
12 quality improvement review of their peers. To this end, it is
13 important for a maximum level of cooperation to exist between the
14 relevant licensing agencies and peer review bodies.

15 (b) To the extent possible, and consistent with the primary duty
16 to protect the public, licensing agencies shall attempt to investigate
17 information derived from reports filed pursuant to Section 805 of
18 the Business and Professions Code in a manner that is not



1 disruptive of a patient's privacy or a licentiate's practice.
2 Specifically, unless an investigation warrants a greater intrusion
3 into a particular identifiable patient's medical information, a
4 licensing agency shall attempt to conduct initial reviews by using
5 redacted records and other sources of information. However,
6 nothing in this act shall be construed to narrow, qualify, or overrule
7 the authority of a licensing agency to obtain access to patient
8 information if it is necessary in order to completely and accurately
9 investigate a report concerning its licentiates.

10 (c) The procedures set forth in this act for the assessment and
11 imposition of penalties for noncompliance with reporting
12 requirements are intended to clarify existing law and do not
13 represent a substantive change in the law.

14 SEC. 2. Section 805 of the Business and Professions Code is
15 amended to read:

16 805. (a) As used in this section, the following terms have the
17 following definitions:

18 (1) "Peer review body" includes:

19 (A) A medical or professional staff of any health care facility
20 or clinic licensed under Division 2 (commencing with Section
21 1200) of the Health and Safety Code or of a facility certified to
22 participate in the federal Medicare program as an ambulatory
23 surgical center.

24 (B) A health care service plan registered under Chapter 2.2
25 (commencing with Section 1340) of Division 2 of the Health and
26 Safety Code *or a disability insurer that contracts with licentiates*
27 *to provide services at alternative rates of payment pursuant to*
28 *Section 10133 of the Insurance Code.*

29 (C) Any medical, psychological, marriage and family therapy,
30 social work, dental, or podiatric professional society having as
31 members at least 25 percent of the eligible licentiates in the area
32 in which it functions (which must include at least one county),
33 which is not organized for profit and which has been determined
34 to be exempt from taxes pursuant to Section 23701 of the Revenue
35 and Taxation Code.

36 (D) A committee organized by any entity consisting of or
37 employing more than 25 licentiates of the same class that functions
38 for the purpose of reviewing the quality of professional care
39 provided by members or employees of that entity.

(2) “Licentiate” means a physician and surgeon, ~~osteopathic physician and surgeon~~, podiatrist, clinical psychologist, marriage and family therapist, clinical social worker, or dentist. “Licentiate” also includes a person authorized to practice medicine pursuant to Section 2113.

(3) “Agency” means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) “Staff privileges” means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) “Denial or termination of staff privileges, membership, or employment” includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) “Medical disciplinary cause or reason” means that aspect of a licentiate’s competence or professional conduct which is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) “805 report” means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report ~~with the relevant agency whenever any of the following actions are taken as a result of a determination of a peer review body:~~ *with the relevant agency within 15 days after the effective date of any of the following which take place as a result of an action of a peer review body:*

(1) A licentiate’s application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate’s membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

~~In addition to the duty to report as set forth in paragraphs (1), (2), and (3), the peer review body also has a duty to report under this section a licentiate's resignation or leave of absence from membership, staff, or employment following notice of an impending investigation based on information indicating medical disciplinary cause or reason and the withdrawal or abandonment of a licentiate's application for staff privileges or membership or for the renewal of those privileges or membership is withdrawn or abandoned following notice of either an investigation or the impending denial or rejection of the application for a medical disciplinary cause or reason.~~

~~The 805 report shall be filed within 15 days after the effective date of the denial, termination, restriction, resignation, or leave of absence, or after the exhaustion of administrative procedures, without regard to any filing for judicial review.~~

(c) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after any of the following takes place as a result of a notice of either an investigation or the impending denial or rejection of the application for a medical disciplinary cause or reason:

(1) Resignation or leave of absence from membership, staff, or employment.

(2) The withdrawal or abandonment of a licentiate's application for staff privileges or membership.

(3) The request for renewal of those privileges or membership is withdrawn or abandoned.

~~An~~

(d) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days. However, if the peer review body has determined that the licentiate does not pose an immediate threat to public health and safety as a result of the

~~licentiate's practice and an active investigation is in progress to determine whether the basis of the summary suspension is factually supported, the 15-day period may be extended to 30 days. If the report is filed after 15 days as a result of an active investigation that has not been completed, the report shall explain the reasons that the investigation was not completed within 15 days.~~

~~A~~

(e) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name *and license number* of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

~~In those instances where~~

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California revokes or suspends, without a stay, the license of a physician, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

~~(e)~~

(f) The reporting required herein shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required

1 by Section 805.5 with respect to reports received on or after
2 January 1, 1976.

3 ~~(d)~~

4 (g) The Medical Board of California, the Osteopathic Medical
5 Board of California, and the ~~Board of Dental Examiners~~ *Dental*
6 *Board of California* shall disclose reports as required by Section
7 805.5.

8 ~~(e)~~

9 (h) An 805 report shall be maintained by an agency for
10 dissemination purposes for a period of three years after receipt.

11 ~~(f)~~

12 (i) No person shall incur any civil or criminal liability as the
13 result of making any report required by this section.

14 ~~(g)~~

15 (j) An intentional failure by any person who is designated or
16 otherwise required by law to file an 805 report is punishable by a
17 fine not to exceed one hundred thousand dollars (\$100,000) per
18 violation. The fine may be imposed in any civil or administrative
19 action or proceeding brought by or on behalf of ~~the~~ *any* agency
20 having regulatory jurisdiction over the licentiate charged with this
21 violation and shall be paid to that agency but not expended until
22 appropriated by the Legislature. The violation of this section shall
23 constitute unprofessional conduct by the licentiate.

24 ~~(h)~~

25 (k) A failure by the administrator of any peer review body, the
26 chief executive officer or administrator of any health care facility,
27 or any person who is designated or otherwise required by law to
28 file an 805 report, whether or not the failure is intentional, is
29 punishable by a fine not exceeding fifty thousand dollars
30 (\$50,000) per violation. The fine may be imposed in any civil or
31 administrative action or proceeding brought by or on behalf of ~~the~~
32 *any* agency having regulatory jurisdiction over the licentiate
33 charged with this violation and shall be paid to that agency but not
34 expended until appropriated by the Legislature.

35 ~~(i)~~

36 (l) Notwithstanding any other provision of law, the State
37 Department of Health Services may bring an action pursuant to
38 subdivisions (g) and (h) against any hospital, clinic, or other health
39 facility under its jurisdiction if any officer, agent, or employee of

1 the hospital, clinic, or other health care facility fails to comply
2 with any duty imposed by this section.

3 (m) *A health care service plan registered under Chapter 2.2*
4 *(commencing with Section 1340) of Division 2 of the Health and*
5 *Safety Code or a disability insurer that negotiates and enters into*
6 *a contract with licentiates to provide services at alternative rates*
7 *of payment pursuant to Section 10133 of the Insurance Code, when*
8 *determining participation with the plan or insurer, shall evaluate,*
9 *on a case-by-case basis, licentiates who are the subject of an 805*
10 *report, and not automatically exclude or deselect these licentiates.*

11 SEC. 3. Section 805.1 of the Business and Professions Code
12 is amended to read:

13 805.1. (a) The Medical Board of California, the Osteopathic
14 Medical Board of California, and the Dental Board of California
15 shall be entitled to inspect and copy the following documents in the
16 record of any disciplinary proceeding resulting in action that is
17 required to be reported pursuant to Section 805:

18 (1) Any statement of charges.

19 (2) Any document, medical chart, or exhibits in evidence.

20 (3) Any opinion, findings, or conclusions.

21 (b) The information so disclosed shall be kept confidential and
22 not subject to discovery, in accordance with Section 800, except
23 that it may be reviewed, as provided in subdivision (c) of Section
24 800, and may be disclosed in any subsequent disciplinary hearing
25 conducted pursuant to the Administrative Procedure Act (Chapter
26 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
27 2 of the Government Code).

28 (c) Each agency specified in subdivision (a) may audit the
29 records of any peer review body to determine whether the peer
30 review body is in compliance with, or has complied with, the
31 requirements of Section 805. The agency may conduct these audits
32 in conjunction with the State Department of Health Services.
33 Nothing in this subdivision shall require these agencies to establish
34 a comprehensive auditing program for all peer review bodies that
35 review the licentiates of the agency.

36 (d) Each agency specified in subdivision (a) shall use redacted
37 records and other sources of information in conducting an initial
38 audit review unless an investigation warrants a greater intrusion
39 into particular identifiable patients' private medical information.

(e) Nothing in this section shall be construed to narrow, qualify, or overrule the authority of a licensing agency to obtain access to patient information if it is necessary in order to completely and accurately investigate a report concerning its licensee.

SEC. 4. Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of ~~any such~~ the institution, shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff, which is received on or after January 1, 1980, the board shall furnish a copy of any report made pursuant to Section 805. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, or (3) if a period of three years has elapsed since the report was submitted. This three-year period shall be tolled during any period the licensee has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. In the event a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.

1 In the event that the board fails to advise the institution within
2 30 working days following its request for a report required by this
3 section, the institution may grant or renew staff privileges for the
4 physician and surgeon, psychologist, podiatrist, or dentist.

5 (c) Any institution described in subdivision (a) or its medical
6 staff that violates subdivision (a) is guilty of a misdemeanor and
7 shall be punished by a fine of not less than two hundred dollars
8 (\$200) nor more than one thousand two hundred dollars (\$1,200).

9 SEC. 5. Section 805.6 is added to the Business and
10 Professions Code, to read:

11 805.6. (a) The Medical Board of California, the Osteopathic
12 Medical Board, and the Dental Board of California shall establish
13 a system of electronic notification that is either initiated by the
14 board or can be accessed by qualified subscribers, and that is
15 designed to achieve early notification to qualified recipients of the
16 existence of new reports that are filed pursuant to Section 805.

17 (b) The State Department of Health Services shall notify the
18 appropriate licensing agency of any reporting violations pursuant
19 to Section 805.

20 SEC. 6. Section 805.7 is added to the Business and
21 Professions Code, to read:

22 805.7. (a) The Medical Board of California shall work with
23 ~~the Citizen Advocacy Center and the Center for Public Interest~~
24 ~~Law to establish a pilot program to develop a cooperative~~
25 ~~relationship between peer review bodies and licensing agencies to~~
26 ~~provide remedial training and education to licentiates who have~~
27 ~~been the subject of a peer review proceeding in which the peer~~
28 ~~review body found no medical disciplinary cause or reason for the~~
29 ~~action.~~ *interested parties in the pursuit of establishing a pilot*
30 *program, similar to those proposed by the Citizens Advocacy*
31 *Center, of early detection of potential quality problems and*
32 *resolutions through informal educational interventions.*

33 (b) The Medical Board of California shall report to the
34 Legislature its findings and recommendations regarding the
35 implementation of this pilot program before January 31, 2002
36 2003.

37 SEC. 7. Section 806 of the Business and Professions Code is
38 amended to read:

39 806. Each agency in the department receiving reports
40 pursuant to the preceding sections shall prepare a statistical report

based upon ~~such~~ *these* records for presentation to the Legislature not later than 30 days after the commencement of each regular session of the Legislature, including *by the type of peer review body, and, where applicable, type of health care facility, the number of reports received and* a summary of administrative and disciplinary action taken with respect to ~~such~~ *these* reports and any recommendations for corrective legislation if the agency considers ~~such~~ legislation to be necessary.

SEC. 8. *Section 2313 of the Business and Professions Code is amended to read:*

2313. The Division of Medical Quality shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board or the division to enjoin licensees pursuant to Sections 125.7, 125.8 and 2311, the circumstances in each case that prompted the board or division to seek that injunctive relief, and whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board or a division against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances.

(c) Information relative to the performance of the division, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of calls resulting in complaint forms being sent to complainants and number of forms returned; number of Section 805 reports by type; number of Section 801 and Section 803 reports; coroner reports received; number of convictions reported to the division; number of criminal filings reported to the division; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the division and court review, respectively; final physician discipline by category; number of citations issued with fines and without fines, and number of public reprimands issued; number of cases in process more than six months from receipt by the division of information concerning the

1 relevant acts to the filing of an accusation; average and median
2 time in processing complaints from original receipt of complaint
3 by the division for all cases at each stage of discipline and court
4 review, respectively; number of persons in diversion, and number
5 successfully completing diversion programs and failing to do so,
6 respectively; probation violation reports and probation revocation
7 filings and dispositions; number of petitions for reinstatement and
8 their dispositions; and caseloads of investigators for original cases
9 and for probation cases, respectively.

10 “Action,” for purposes of this section, includes proceedings
11 brought by, or on behalf of, the division against licensees for
12 unprofessional conduct which have not been finally adjudicated,
13 as well as disciplinary actions taken against licensees.

14 *(d) The total number of reports received pursuant to Section*
15 *805 by the type of peer review body reporting and, where*
16 *applicable, the type of health care facility involved and the total*
17 *number and type of administrative or disciplinary actions taken by*
18 *the Medical Board of California with respect to the reports.*

